IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 10.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.363 of 2006

Saravanan ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai-8. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner's brother Senthil @ Vellai Senthil S/o Mani has been detained under Act 14/82 as a "Goonda" vide detention order dated 14.11.2005 on the file of the second respondent herein, made in Memo No.519/BDFGISV/2005, quash the same and consequently direct the respondents to produce the body and person of the said detenu before this Court and set him at liberty from the Central Prison, Chennai.

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For Petitioner : Mr.V.Parthiban for
Mr.M.Rajavelu

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the brother of the detenu by name Senthil @ Vellai Senthil, who is detained as a ''Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 14.11.2005, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, Mr.V.Parthiban, learned counsel for the petitioner submitted that though the remarks were received by the Government on 16.05.2006, the same were submitted for orders only on 22.05.2006. According to the learned counsel, the time taken for mere placing the file before the appropriate officer, cannot be sustained. In such circumstances, according to him, the disposal of the representation cannot be treated as a proper disposal and in that way, the detenu is prejudiced. We verified the particulars furnished by the learned Additional Public Prosecutor, which show that the representation of the detenu dated 03.04.2006 was received by the Government on 09.05.2006 and remarks were called for on 10.05.2006 and the remarks were received by the Government on 16.05.2006 and the File was submitted on 22.05.2006 and the same was dealt with by the Under Secretary and Deputy Secretary on the same day i.e. on 22.05.2006 and finally, the Minister for Prohibition and Excise passed orders on 23.05.2006. The rejection letter was prepared on 24.05.2006 and the same was sent to the detenu on 25.05.2006 and served to him on 26.05.2006. Though this court is not appreciating the time taken by the Officers in placing remarks along with the representation before the appropriate authority, in view of the fact that in between 16.05.2006 and 22.05.2006, two holidays viz., Saturday and Sunday were intervened, we are of the view that the time taken by them for submitting the papers before the authority cannot be said to be excessive or beyond the permissible limit of three days. Accordingly, we reject the above contention.

4. Learned counsel for the petitioner next submitted that though the detaining authority, in para 4 of the grounds of detention, has specifically stated that the detenu Senthil @ Vellaisenthil was in remand even in E1 Mylapore Police Station Crime No.980/2005 and he has not moved any bail application so far, there is no material to arrive at such a conclusion. In other words, according to the

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counsel, the Special Report does not contain specific information whether the detenu has moved any bail application on the date of passing of the detention order. With reference to the said contention, we verified the Special Report of the sponsoring authority dated 09.11.2005, which is available at page 163 of the paper book supplied to the detenu. Though the said relevant information is not available in the main portion of his report, however, it is not disputed that at the end of his report, the sponsoring authority has specifically stated that the accused has not filed any application seeking bail. In addition to this, the learned Additional Public Prosecutor has brought to our notice that in the affidavit filed by the Inspector of Police, Law and order, E1, Mylapore Police Station, Chennai-4, in the penultimate paragraph he has reiterated the same statement as made in the Special Report. In the light of the above details/information, we are of the view that the detaining authority was appraised of the fact that the detenu has not filed any bail application on the date of passing of the detention order. Accordingly, we reject the said contention.

5. The learned counsel appearing for the petitioner finally submitted that inasmuch as the first three adverse cases, even according to the respondents occurred in the year 2000 and the fourth adverse case, according to the respondent occurred on 03.11.2005, i.e.just one day prior to the ground occurrence i.e.on 04.11.2005, there is no nexus to the other cases, which had taken place five years back and these relevant aspects have not been considered by the detaining authority, the detention order, is liable to be quashed.

6. In the light of the said contention, we verified all the four adverse cases as well as ground case dated 04.11.2005. It is true that first three adverse cases are of the year 2000 and the fourth adverse case relates to an occurrence dated 03.11.2005 in Crime No.978 of 2005, E1 Mylapore Police Station, Chennai and the offence involved are under Section 384 and 506(ii) IPC. The ground case dated 04.11.2005 based on which the detaining authority has passed the detention order relates to Crime No.980/2005, E1 Mylapore Police Station, for the offence under Sections 341, 324, 307, 336, 427 and 506(ii) IPC. The Additional Public Prosecutor by drawing our attention to the decision of the Division Bench of this Court reported in 1993 Law Weekly Criminal page 113(SUBBAIAH @ THIRUVOTIYUR SUBBAIYAH @ MAHADEVAN VS. THE COMMISSIONER OF POLICE, MADRAS CITY, MADRAS AND ANOTHER), has submitted that the action taken by the detaining authority cannot be faulted with. In the said decision, similar contention was urged before the Division Bench. By rejecting the said contention, Their Lordships have held as follows:

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"....Even a lapse of one year between the two offences would not negative the proximity of the offences by a habitual offender. The question has been considered by the Supreme Court in Raj Kumar Singh Vs. State of Bihar. One of the cases was with reference to an offence in March 1984 and and other was in March 1984. The Court held that there was sufficient proximity between the two offences...."

7. It is also useful to refer another decision of this Court dated 20.01.2004 in HCP No.1430 of 2003. While considering the similar contention, a Division Bench of this Court, in paragraph 3, has observed as follows:

"... What is being seen here is that the Criminal activities of the detenu have not stopped at all and he took to the crimes barely within ten months of the second adverse case. This is apart from the fact that we cannot go into the merits of the detention order one way or the other....."

8. It is clear that merely because there is a time gap in between the occurrence as observed in the above decision, the relevant factor to be noted is a criminal activities of the detenu have not been stopped even after five years. Further in our case, the fourth occurrence is dated 03.11.2005 and on the next date he has committed a serious crime i.e., on 04.11.2005. Taking note of these factual aspects, we are unable to accept the last contention also.

9. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2. The Commissioner of Police, Greater Chennai, Egmore, Chennai-8.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

HPR(CO)
SR/14.7.2006

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